

Open Meeting Law Training



Sarah Bradley, Senior Deputy Attorney General
sbradley@ag.nv.gov

Legislative Intent

- “In exacting this chapter, the Legislature finds and declares that *all public bodies exist to aid in the conduct of the people’s business*. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.” NRS 241.010(1).
- “The exceptions provided in this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.” NRS 241.016(4).
- Exceptions to the OML should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986).
- “A statute promulgated for the public benefit such as a *public meeting law should be liberally construed and broadly interpreted* to promote openness in government.” *Dewey v. Redevelopment Agency of Reno* 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003).
- Open meetings are essential to democracy.
- The Nevada OML was enacted in 1960 to ensure that the actions and deliberations of public bodies be conducted openly.

Applicability of the Open Meeting Law (OML) in Nevada

- All *meetings* of *public bodies* must be open and public, and all persons must be permitted to attend any meeting of these public bodies. NRS 241.020(1)
- Administrative, legislative, and executive organizations may all be “public bodies.” (the Legislature is not-NRS 241.16(2)(a))
- Public bodies working on behalf of Nevada citizens must conduct open meetings in conformity with the statutory requirements of the OML including the requirement to publish an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).
- The definition of a “public body” is found at NRS 241.015(4)(a).

What is a Public Body?

- NRS 241.015(4)(a):
 - Any administrative, advisory, executive or legislative body of the State or a local government,
 - Consisting of 2 or more people,
 - Expends or disburses or is supported in whole or in part by tax revenue, or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue,
 - Make collective decisions or recommendations (staff meetings within an agency or interagency meetings with no independent legal authority, budget, and formal mission or purpose will not fall within the definition of a public body) OMLO 2004-04.
- Created by the Nevada Constitution, Nevada Revised Statute (NRS), city charter, the Nevada Administrative Code (NAC), an Executive Order from the Governor, resolution or formal action from a body created by statute or local ordinance, or a resolution or action by a political subdivision.

General Requirements

- Deliberation and action must be properly noticed and taken openly. NRS 241.010.
- Action is only taken by the body as a whole; members have no individual decision-making powers and may only speak on behalf of the body if authorized to do so during an open meeting.
- To the extent a multimember group is appointed by a public body and given the task of making recommendations to that public body, that group is also a “public body” subject to the OML. NRS 241.015(4).

What About Sub-Committees?

- The OAG's OML Manual states: "...to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law."
- If a sub-committee recommendation to a parent body is more than mere fact-finding because the sub-committee has to choose or accept options, or decide to accept certain facts while rejecting others, or if it has to make any type of choice in order to create a recommendation, then it has participated in the decision-making process and is subject to the OML. (unless specifically exempted by statute.)
 - *See OML Manual, Section 3.04*
- Remember the Legislative Intent.
 - When in doubt, consider an open meeting.

What is a Meeting?

- Two Essential Elements from NRS 241.015:
 - **Quorum** of members of a public body *gathering* together with EITHER:
 - **Deliberation** toward a decision; and/or
 - **Action:** which means making a decision, commitment or promise over a matter within the public body's supervision, jurisdiction, control or advisory power.

Quorum + (Deliberation or Action) = Meeting

- A quorum is a simple majority of the total body (NRS 241.015(5)); action requires majority vote of members present (NRS 241.015(1)).
- A gathering of a quorum at a social function or non-body specific training is **not** a meeting **as long as** there is no deliberation or action.
- An attorney-client conference on potential and existing litigation is **not** a meeting **as long as** there is no action.

Critical Definitions

- *Deliberation* means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion, or exchange of facts preliminary to the ultimate decision.
 - NRS 241.015(2).
- *Action* means
 - A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body. NRS 241.015(1).
 - Signified by vote, usually “aye” when in favor and “nay” when against the pending motion.
 - No secret ballots or secret promises.

Requirements for Meetings

- Notice and Agendas
- Motions and Decisions
- Public Comment
- Supporting Materials
- Recordings
- Minutes
- Special Situations:
 - Character, competence, or misconduct,
 - Administrative action “regarding” a person, and
 - Emergency meetings.
 - An emergency meeting may only be called to address truly unforeseen circumstances. For example, disasters and health/safety emergencies. NRS 241.020(10).

Key Requirements

- AGENDA: Must provide full notice and disclosure of discussion topics and any possible action. NRS 241.020(2)(d)(1).
- DECISIONS: Deliberation and action must be properly noticed and taken openly. NRS 241.020(2)(d)(2). “For Possible Action.”
- DECISIONS: Action is only taken by the body as a whole.
- PUBLIC COMMENT: at beginning/end or before any action item. NRS 241.020(2)(d)(3).
- SUPPORTING MATERIALS: Supporting materials must be available to the public when provided to public body members. NRS 241.020(7).
- MINUTES: Minutes must be approved within 45 days or at the next meeting (whichever is later) and must be made available to the public within 30 working days. NRS 241.035(2).

Meeting Notice and Agenda – NRS 241.020

- Time, place and location of meeting.
- List of locations posted.
- Agenda consisting of a **clear and complete** statement of the topics scheduled to be considered.
- Action items clearly denoted as “for possible action.”
- Public comment at beginning/end or before any action item.
- Posted at office of the public body *or* location of meeting *and* 3 other separate, prominent places within Nevada.
- Posted at public body website *and* at notice.nv.gov.
- Posted no later than 9AM of the third working day before the meeting.

What is “Clear and Complete?”

- Agenda items must be clear and complete. NRS 241.020(2)(d)(1).
- A higher degree of specificity is necessary for topics of substantial public interest. *Sandoval v. Board of Regents*, 119 Nev. 148, 154-55, 67 P.3d 902, 906 (2003). Factors to consider include:
 - Does topic generate public comment?
 - Does topic generate debate among members of body?
 - Does topic generate media interest/coverage?
- Agenda items such as “member comments” and “reports” are problematic in that these invite discussion and possible deliberation on topics that are not set forth on the agenda. Any topic that is raised should be included on a future agenda before any discussion can ensue.

Meeting Notice and Agenda Contents

- SUPPORTING MATERIALS CONTACT: Name and contact information for person the public may request supporting materials from and locations where the supporting material is available NRS 241.020(2)(c).
- NAME OF THE PERSON: If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person (NRS 241.020(2)(d)(4)) AND if the public body will consider whether to take administrative action regarding a person. NRS 241.020(2)(d)(5).
- ACCOMMODATIONS: Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. NRS 241.020(1).
- Notification that items on the agenda may be taken out of order, may be combined for consideration, and may be removed from the agenda or delayed for discussion at any time.
- Any restrictions on comments by the general public.

Closed Sessions (of Meetings)

- CLOSED SESSION: The specific statutory authority authorizing that a portion of the meeting may be closed. NRS 241.020(1); NRS 241.030(3).
- Closed sessions may not be held:
 - To discuss the appointment of any person to public office or as a member of a public body. NRS 241.030(4)(d); *see also City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974 (1989).
 - To consider the character, alleged misconduct, or professional competence of an elected member of a public body, or a person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position. NRS 241.031(1).
- Still must keep (separate) meeting minutes and recording for closed session.

Additional Requirements (Accommodations and Notice)

- Notice to persons who have requested notice of meetings pursuant to NRS 241.020(3)(c).
- Additional notice requirements for consideration of character, misconduct, competence, or physical or mental health: 5 days personal service or 21 days certified mail. NRS 241.033. (*See also* NRS 233B.121.)
 - Does not apply to passing remarks.
- One copy of the agenda, any supporting materials must be provided at no cost to a member of the public requesting them and *at least* one copy made available at the meeting. NRS 241.020(6); NRS 241.035(2).
- Supporting materials must be available to the public when provided to public body members. NRS 241.020(7).
- Meeting must be recorded or transcribed. Recording/Transcription must be made available to the public. NRS 241.035(4).
 - If the meeting is transcribed by a court reporter, the court reporter gets his or her per page fee according to the contract with the public body. *See* NRS 241.035(5); NRS 239.053.

“Working Day” means M - F

- “Working day” includes Monday through Friday excluding holidays. NRS 241.015(6).
- “[E]very day of the week, except Saturday and Sunday and any day declared to be a legal holiday pursuant to NRS 236.015.”



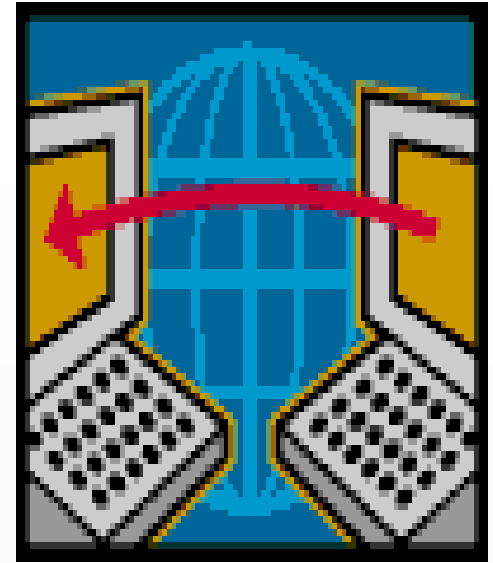
Meeting Minutes and Recordings

- A copy of the meeting minutes or audio recording must be made available to a member of the public at no charge.
 - Both available within 30 working days after adjournment of the meeting for inspection by the public.
- Recording of meeting must be kept at least one year. NRS 241.035(4)(a).
- Meeting minutes are public records and must be kept for at least five years. Thereafter may be transferred for archival preservation. NRS 241.035(2).

Meeting Minutes

- Minutes must be kept in conformance with NRS 241.035 and include:
 - Date, time and place of meeting;
 - Members in attendance;
 - Substance of all matters proposed, discussed or decided; and
 - Substance of remarks made by any member of public or their written remarks if requested.
- What about stacks of documents?
 - It depends. This is generally not a summary. But—
 - If a member of the public body asks that the material be included in the minutes, it should be included. NRS 241.035(1)(e).

Governing Bodies of Cities and Counties with a Population Greater Than 45,000 Must Upload Supporting Materials to its Website



- Material provided to the governing body during its meeting must be uploaded to its website within 24 hours of adjournment of the meeting.
- The right of the public to request a paper copy of the material pursuant to NRS 241.020(6) is not eliminated.
 - Same rule for meeting agenda, minutes, and recording: one paper copy at no charge is required if requested.
- Technical problems with the upload does not constitute a violation of the OML.

To Mail or not to Mail?

- If a requester of supporting documents has agreed to receive supporting materials by *email* the public body shall, if feasible, provide it electronically, but this service is only supplementary to the right of the public to request materials in a paper copy.



State Notice Website

- As of July 1, 2014, this is a requirement for local governments.
- All meetings must be noticed on the State's official website, which is run by the Department of Administration.
- <https://notice/nv.gov/> or see Nevada's home page for the one-link click for access. Be sure to log in or contact Department of Administration for assistance with the upload of your URL where the public may find your agenda.



Nevada Public Notice Website

Government
State
City
County
K-12
Higher Education
Special Districts

Entity
Residential Design
Board of Athletic Trainers
Board of Cosmetology
Board Of Dental Examiners
Board of Dispensing Opticians
Board of Examiners for Alcohol, Drug and Gambling Counselors

Public Body
Advisory Commission on the Administration of Justice's Subcommittee on Victims of Crime
Advisory Committee to Study Laws Concerning Sex Offender Registration
Advisory Council for Prosecuting Attorneys
Attorney General


Results for Attorney General

 [Subscribe to this public body's notice RSS feed](#)

Results are limited to the last 7 days and for all dates in the future.

Notice	Date	Time	Status	Type
--------	------	------	--------	------

Today's Meetings

 [Subscribe to Today's Meetings RSS Feed](#)

12:00 AM		Workforce Innovation Opportunity Act Governance Team Workgroup
----------	---	--

Record of Compliance with Posting Requirement

- Each public body must make and keep a record of compliance with the statutory requirement for posting notice and agenda before 9a.m. of the third working day before a public meeting. The record is to be made by the person who posted a copy of the public notice and it must include: (1) date and time of posting, (2) address of location of posting, (3) name, title, and signature of person who posted the public notice.



Public Comment Pitfalls

- Restrictions must be reasonable “time, place, and manner” restrictions. NRS 241.020(2)(d)(7). CANNOT-
 - Halt comment based on viewpoint of speaker;
 - Halt comment upon belief defamation is occurring; or
 - Halt comment critical of public official.
- Presiding officer may halt comments that become unduly repetitive or that stray from the scope of a specific agenda topic for which comment is offered, or *halt conduct that is willfully disruptive*. See *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995); *White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990).
- The OML does not “[p]revent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.” NRS 241.030(4)(a).

Violations

- Actions taken in violation of the law are void. NRS 241.036.
- The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
- The OAG has subpoena authority to investigate from NRS 241.039(4).
- When a violation of the OML occurs or is alleged, the OAG recommends that the public body made every effort to promptly correct the apparent violation. NRS 241.0365. But corrective action is prospective only. NRS 241.0365(4).
- Any person denied a right conferred by this chapter may sue to have an action declared void, to require compliance with or prevent violations of this chapter. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection. NRS 241.037(2)
- Criminal and civil penalties may apply if violation is knowing. NRS 241.040.

Violations

- Corrective action requires that the public body engage in an independent deliberative action in full compliance with the OML. *See, e.g., Page v. MiraCosta Community College Dist.*, 102 Cal. Rptr. 3d 902, 930 (Cal. Ct. App. 2009); *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*, 292 P.3d 1132, 1137–8 (Colo. Ct. App. 2012); *Zorc v. City of Vero Beach*, 722 So.2d 891, 902-3 (Fla. Dist. Ct. App. 1998); *Gronberg v. Teton County Housing Authority*, 247 P.3d 35, 42 (Wyo. 2011).
- **CORRECTIVE ACTION:** A public body must clearly denote that corrective action may be taken at a meeting by placing the term “for possible corrective action” next to the appropriate agenda item. NRS 241.020(2)(d)(2).

How to Avoid Penalties (*aka Intent Matters*)

- Criminal prosecution of member of public body for violation of NRS Chapter, relating to meetings of public bodies, may only be commenced where:
 - (1) action is taken in violation of that chapter; and
 - (2) member had knowledge of fact that meeting was in violation thereof. Attorney General Opinion 81-A (2-23-1981).
- OML was violated but penalties of NRS 241.040 did not apply because: (1) the meeting was properly rescheduled; (2) the meeting was continued in good faith to accommodate the members of the public in attendance; and (3) no action was taken at the meeting. OMLO 99-06 (3-19-1999).

Using Technology for a Meeting

- Quorum of a public body using serial electronic communication to deliberate toward or make a decision violates law. NRS 241.016(4); *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998).
- If technology is used to convene a quorum for a public meeting:
 - There must always be a physical location for members of the public to attend the meeting. NRS 241.020(1).
 - All the members of the public body and the members of the public who are present at the meeting must be able to hear or observe and participate in the meeting. NRS 241.010(2).
 - That technology must not be used to circumvent the spirit or letter of the OML. NRS 241.016(4).

Additional Points

- Parliamentary procedure not addressed in OML - Duties of the presiding officer, recognizing speakers, motions and voting, making a clear record. *See Robert's Rules of Order* (11th ed. 2011).
- Disclosure and abstention prior to consideration of a topic in conformance with Ethics in Government Law (NRS Chapter 281A). Abstain only in a clear case where the independence of judgment of a reasonable person in your situation would be materially affected by the conflict of interest disclosed. *See* NRS 281A.420; *see also Carrigan v. Commission on Ethics*, _ Nev. _, 313 P.3d 880 (2013).

The Impact of Social Media

- Draft policies for your public body regarding social media.
- The OML applies to social media.
 - Remind public body members not to deliberate or discuss public body business on social media.
 - Public body members should not “live tweet” or “post live” about public body proceedings.
 - Cannot ask for votes or otherwise poll other members on social media.
 - If it would violate the OML if it was done in person, it violates the OML to do it on social media also.



Attorney General Opinions

- The public body may request written opinions on questions of Nevada law from the OAG pursuant to NRS 228.150. When relying on an Attorney General Opinion in good faith, the Board is protected from liability for damages against the governmental body it serves if the Opinion is later found to be incorrect. *See Cannon v. Taylor*, 88 Nev. 89, 91, 493 P.2d 1313 (1972).

Further Resources

- OAG's Open Meeting Law Manual (12th ed., January 2016)
 - Statutory provisions,
 - Explanation of requirements,
 - Examples,
 - Compliance checklists, and
 - Sample Forms: agenda, minutes and notice of meeting to consider a person's character, etc.
- Available on the Attorney General's website at:
 - [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Government al Affairs/OML Portal/2016-01-25 OML 12TH AGOMANUAL.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Government%20Affairs/OML%20Portal/2016-01-25%20OML%2012TH%20AGOMANUAL.pdf)
- OAG's Board and Commission Manual:
 - [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/Boards %20and%20Commissions%20Manual%20\(With%20Edits\).pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/Boards%20and%20Commissions%20Manual%20(With%20Edits).pdf)
- Contact your legal counsel.